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May 21, 2015

Ray Newby, P.G.
Coastal Geologist
Texas General Land Office
Coastal Resources Program
P.O. Box 12873
Austin, TX 78711-2873

Dear Mr. Newby:

The Natural Resource Trustees for the *Deepwater Horizon* Oil Spill are proposing three early restoration projects for implementation within or with the potential to affect the coastal zone of Texas. These projects are proposed as Phase IV early restoration actions for the Deepwater Horizon oil spill in a just released document titled "Draft Phase IV Early Restoration Plan and Environmental Assessments" (Draft Plan). The U. S. Department of the Interior (DOI), the National Oceanic and Atmospheric Administration (NOAA), the United States Department of Agriculture, and the United States Environmental Protection Agency (the undersigned Federal Trustees), have reviewed these projects for consistency with Texas Coastal Management Program (TCMP) and have found that, as best as can be determined at this level of planning, that the proposed restoration actions are consistent to the maximum extent practicable with the applicable, enforceable policies of the State's program. This letter submits that determination for State review.

Background

On or about April 20, 2010, the mobile offshore drilling unit *Deepwater Horizon* experienced an explosion, leading to a fire and its subsequent sinking in the Gulf of Mexico. These events resulted in the discharge of several millions of barrels of oil into the Gulf over a period of approximately 3 months. In addition, various response actions were undertaken, including, but not limited to the application of approximately hundreds of thousands or more gallons of dispersants to the waters of the spill area in an attempt to minimize impacts from spilled oil. These events are hereafter collectively referred to as the Oil Spill.

The magnitude of the Oil Spill and the U.S. Coast Guard-directed efforts to contain and clean up the oil across the Gulf were massive and unprecedented. The Oil Spill and associated response efforts impacted coastal and oceanic ecosystems ranging from the deep ocean floor, through the oceanic water column, to the highly productive coastal habitats of the northern Gulf of Mexico, including estuaries, shorelines and coastal marsh as well as ecologically, recreationally, and commercially important species and their habitats

in the Gulf of Mexico and along the coastal areas of Alabama, Florida, Louisiana, Mississippi, and Texas. These fish and wildlife species and their supporting habitats provide a number of important ecological and recreational services.

The Federal Trustees and the designated natural resource trustee agencies for each of the five states on the Gulf coast, (collectively, the Trustees), including the Texas Parks and Wildlife Department (TPWD), the Texas General Land Office (TGLO), and the Texas Commission on Environmental Quality, are each authorized by the Oil Pollution Act of 1990 (OPA) and other applicable federal or state laws to assess and assert a natural resource damages claim for this Oil Spill, in order to fully restore and compensate the public for the harm the spill caused to natural resources, including lost use of these resources by the public. Consistent with their authority and their claim, the Trustees are investigating the resource injuries and losses that occurred and have initiated restoration planning to identify the actions that will be needed or appropriate to restore injured resources and to make the public whole for the injuries and losses that occurred. That process, known as a Natural Resource Damage Assessment (NRDA), was initiated in the earliest days of the Oil Spill and is on-going at this time.

On April 20, 2011, DOI, NOAA, and the State Trustees entered into an agreement with BP, a responsible party for the Oil Spill, under which BP agreed to provide $1 billion for early restoration projects in the Gulf to address injuries to natural resources caused by the Oil Spill. That agreement, entitled "Framework for Early Restoration Addressing Injuries Resulting from the *Deepwater Horizon* Oil Spill" (Framework Agreement)[1], established a process under which the Trustees and BP are working together "to commence implementation of early restoration projects that will provide meaningful benefits to accelerate restoration in the Gulf as quickly as practicable" prior to completion of the NRDA process or full resolution of the Trustees' natural resource damages claims. Fifty-four early restoration projects have already been selected for this purpose across the Gulf (See Phase I Final Early Restoration Plan, April 18, 2012; Phase II Early Restoration Plan, December 21, 2012; and Phase III Early Restoration Plan and Early Restoration Programmatic Environmental Impact Statement (Phase III Plan), June 2014[2]). Implementation of these projects is underway.[3]

The Trustees are now proposing a fourth set of early restoration projects (Phase IV) for implementation across the Gulf. The proposed Phase IV projects include three that would be implemented within or otherwise have a potential to affect resources within the coastal zone of Texas. These three projects are described in Appendix A to this letter. The Trustees are presently seeking public review and comment on these projects in the (Draft Plan) released on May 20, 2015. The Draft Plan is available for public review and comment until June 19, 2015. The notice announcing the comment period on the Draft Plan may be found at: *https://www.federalregister.gov/articles/2015/05/20/2015-11945/deepwater-horizon-oil-spill-draft-phase-iv-early-restoration-plan-and-environmental-assessments*.

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[1] The Framework Agreement is available at: *http://www.gulfspillrestoration.noaa.gov/wp-content/uploads/2011/05/framework-for-early-restoration-04212011.pdf*

[2] The Phase III Plan sets forth the Trustees' programmatic plan for early restoration decisions under the Oil Pollution Act and the Framework Agreement. It identified the suite of project types suitable for early restoration going forward. It also identified another set of approved early restoration projects. The Phase III Plan was approved by the Trustees in a Record of Decision dated October 2, 2014

[3] Additional information about these projects is available at: *http://www.gulfspillrestoration.noaa.gov/restoration/early-restoration/*

The projects previously chosen and the projects the Trustees are now proposing do not represent the full extent of restoration needed to satisfy the Trustees' natural resource damages claims against the responsible parties for the Oil Spill. They are intended only to help accelerate meaningful restoration in the Gulf prior to completion of the full NRDA.

Proposed Phase IV Early Restoration Projects:

The following proposed early restoration actions would be implemented in (in whole or in part) or have the potential to affect resources found in Texas' coastal zone:

1. Sea Turtle Early Restoration Project – This project is a multi-faceted approach to restoration that collectively addresses identified needs for a variety of species and life stages of sea turtles, consistent with long-term recovery plans and plan objectives for sea turtles in the Gulf of Mexico. The Sea Turtle Early Restoration project consists of four complementary project components:
    - The Kemp's Ridley Sea Turtle Nest Detection and Enhancement component would provide needed additional staff, infrastructure, training, education activities, equipment, supplies, and vehicles over a 10-year period in both Texas and Mexico for Kemp's ridley sea turtle nest detection and protection.
    - The Enhancement of the Sea Turtle Stranding and Salvage Network (STSSN) and Development of an Emergency Response Program component would enhance the existing STSSN beyond current capacities for 10 years in Texas and across the Gulf as well as develop a formal Emergency Response Program within the Gulf of Mexico.
    - The Gulf of Mexico Shrimp Trawl Bycatch Reduction component would enhance two existing NOAA programs which would work to reduce the bycatch of sea turtles in shrimp trawls in the Gulf of Mexico. The two programs are the Gear Monitoring Team (GMT), which provides education and outreach efforts to encourage fisher compliance with existing federal Turtle Excluder Devices (TED), and the Southeast Shrimp Trawl Fisheries Observer Program (Observer Program), which monitors sea turtle bycatch in commercial shrimp trawls.
    - The Texas Enhanced Fisheries Bycatch Enforcement component would enhance TPWD enforcement activities for fisheries that incidentally catch sea turtles while they operate primarily in Texas State waters within the Gulf of Mexico for a 10-year period.

2. Pelagic Longline Bycatch Reduction Project – This proposed project aims to restore pelagic fish by reducing fish mortality from bycatch and other dead fish discards in the U.S. Atlantic pelagic longline fishery (PLL) operating in the Gulf of Mexico. The proposed project is comprised of two integrated actions: an annual 6-month repose for PLL fishing in the Gulf of Mexico, to coincide with bluefin tuna spawning season, to be implemented via a volunteer- and compensation-based program in the PLL fishery and provisioning of gear alternatives with lower bycatch rates for use by participating fishermen to continue to fish for target species during the repose period.

3. Texas Rookery Islands Project – This proposed project would restore and protect three rookery islands in Galveston Bay and one rookery island in East Matagorda Bay. Restoration actions at each rookery island would increase the amount of available nesting habitat by expanding the size

of the island enhance the quality of habitat by establishing native vegetation. Habitat longevity would be increased by expanding the size of the island, establishing vegetation, and constructing protective features, such as breakwaters or levees. These restoration actions would result in an increase in the numbers of nesting colonial waterbirds. Rookery Islands in Galveston Bay include Dickinson Bay Island II, located within Dickinson Bay; Rollover Bay Island, located in East (Galveston) Bay; and Smith Point Island, located west of the Smith Point peninsula. Dressing Point Island lies in East Matagorda Bay and is part of the Big Boggy National Wildlife Refuge.

Appendix A to this letter contains a more detailed summary of each of these proposed projects, and provides the location (Chapter, section) of the proposed project description appearing in the Draft Plan. The Draft Plan is available at: *http://www.gulfspillrestoration.noaa.gov* or *http://www.doi.gov/deepwaterhorizon*

Our evaluation of the principal enforceable policies of the TCMP that are potentially applicable to the listed Phase IV early restoration projects and the basis of our determination of consistency with these policies is summarized in Appendix B.

Conclusion:

Based on review of the requirements of the State's coastal zone management program, and after evaluating the applicable factors associated with activities affecting the coastal zone, a determination has been made that the proposed projects listed above are consistent to the maximum extent practicable with the applicable, enforceable policies of the program.

For the Federal Trustees, this represents the earliest opportunity for consideration of the consistency of the proposed Phase IV early restoration projects with the TCMP. Early consideration of the consistency of these projects with the TCMP will provide support for finalizing the selection of projects and help the participating federal, state and local agencies in expeditiously implementing restoration in keeping with the goals of early restoration for the Oil Spill. If selected, implementation of these projects will remain subject to any additional consistency reviews for these projects that would be required or might otherwise occur under the TCMP at a later stage of planning.

Because the projects are being proposed as part of the early restoration process, i.e., are intended to accelerate the restoration of resources and services impacted by the Oil Spill, the Federal Trustees are requesting and would deeply appreciate a response to this determination of consistency as soon as is practicable. We thank you in advance for your efforts to accommodate this request.

Sincerely,

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Harriet M. Deal
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APPENDIX A:

DESCRIPTIONS OF PROPOSED PHASE IV EARLY RESTORATION PROJECTS FOR TCMP CONSISTENCY REVIEW

Sea Turtle Early Restoration Project *(See PHASE IV DERP, Chapter 13, Section 13.1, for more detailed project description)* –The proposed Sea Turtle Early Restoration project consists of four complementary project components: (1) Kemp's Ridley Sea Turtle Nest Detection and Enhancement; (2) Enhancement of the Sea Turtle Stranding and Salvage Network (STSSN) and Development of an Emergency Response Program; (3) Gulf of Mexico Shrimp Trawl Bycatch Reduction; and (4) Texas Enhanced Fisheries Bycatch Enforcement, each of which would aid in the recovery of sea turtles. The following summarizes the various activities that collectively comprise this proposed project:

- Kemp's Ridley Sea Turtle Nest Detection and Enhancement - These proposed actions would support ongoing conservation efforts for the Kemp's ridley sea turtle in Texas and Mexico. The primary goal of these activities would be to reduce sea turtle hatchling mortalities through continued support and enhancement of nest detection and protection activities in Texas and Mexico as part of the ongoing Kemp's ridley recovery effort:

    - *Proposed Activities in Texas* - This portion of the proposed restoration project would maintain, improve and/or enhance current nest detection, egg relocation, and nest protection efforts in Texas . The proposed project would provide funding to NPS, TPWD, USFWS, and other partner NGOs and universities to support ongoing nest detection patrols and protection in Texas for the next 10 years. In cooperation with several partners, the NPS conducts an extensive program to detect, document, and protect nesting Kemp's ridley sea turtles and their nests in Texas. Today, nest detection patrols occur to some extent from the Bolivar Peninsula on the north Texas Gulf Coast to Boca Chica Beach at the Texas/Mexico border. Kemp's ridley nest primarily during the day in Texas and patrols are generally conducted daily from April through mid-July. The funding would support personnel expenses, training, supplies, equipment, fuel, vehicle purchases and maintenance as part of the current nest detection program. It would also allow for the construction of two base camp cabins in the remote southern end of Padre Island National Seashore (PAIS). A nesting corral would be constructed near each base camp to reduce risks associated with transporting eggs long distances over rough terrain. The proposed actions would improve detection and protection efforts on PAIS beaches and increase egg and hatchling survival, by decreasing response time, increasing corral capacity and shortening the travel distance from nests to corrals. The additional cabins would provide better distribution of park staff to begin and end their patrols each day, allowing for more work hours applied towards monitoring. Once sea turtles emerge from hatching, hatchlings would be released near the various corrals where they were held, thereby dispersing the hatchlings along the Gulf beach and providing releases closer to where the nests were found.

    - *Proposed Activities in Mexico* - This portion of the proposed restoration project would

maintain, improve and/or enhance long-term nest detection, egg relocation, and nest protection efforts in Mexico. Over 90% of the Kemp's ridley turtles' population nests within one 78-mile stretch of beach in the state of Tamaulipas, Mexico. Since 1981, the Gladys Porter Zoo has administered the United States' portion of funds for the joint U.S./Mexico effort to protect and increase the production of Kemp's ridley sea turtles at their natal beaches located in in Tamaulipas, Mexico. Texas Trustees would provide funding to the Gladys Porter Zoo over a 10-year period to support nesting patrols, nest protection, and local education efforts. These activities are part of the long-term efforts identified in The Recovery Plan. For the Mexico activities of this component, a bi-national field crew, including staff from the Gladys Porter Zoo and Mexico, would work under the supervision of trained sea turtle biologists to conduct beach patrols looking for sea turtles, sea turtle tracks, and their nests.

- Enhancement of the Sea Turtle Stranding and Salvage Network (STSSN) and Development of an Emergency Response Program – These proposed actions would improve response capabilities to quickly recover dead and injured sea turtles in the GOM. This proposed component includes 1) NOAA's enhancement of the Gulf of Mexico STSSN beyond current capacities for 10 years, 2) Texas Trustees' enhancement of the STSSN within Texas beyond current capacities for 10 years, and 3) NOAA's establishment of a formal Sea Turtle Emergency Response Program within the Gulf of Mexico.

    - *NOAA Enhancement of the Gulf-Wide STSSN* – These proposed actions would enhance the infrastructure of the Gulf of Mexico STSSN across all five states to increase and improve the capability for response, coordination, data handling and reporting, and streamlined data dissemination for use in conservation management programs. Participants in the Gulf-wide STSSN enhancement would include NOAA and the state STSSN coordinators for each of the five Gulf states. The proposed project would provide funding for positions in each of the Gulf states and three positions hired by NOAA to focus on Gulf-wide STSSN coordination. Enhancement of the STSSN would result in more rapid response to unusual stranding events, allowing mortality sources to be identified and addressed more rapidly and solutions to be implemented where possible. The proposed actions would enhance and improve the STSSN's capacity for effective response and coordination of conservation activities across the Gulf states.

    - *Enhancement of the STSSN and Rehabilitation Efforts in Texas* - DOI and the Texas Trustees would provide additional enhancement of the STSSN within Texas to expand the capacity of the network. Stranded sea turtles in Texas are generally located during directed searches and as a result of reports from the public. Because much of the Texas coast is remote, difficult to access, and often requires a four-wheel drive vehicle or boat to retrieve stranded turtles, response times to stranded sea turtles can be lengthy. This proposed component would expand the STSSN's capacity to find and rehabilitate injured and cold stunned turtles, with the goal of increasing the number of live sea turtles being returned to the Gulf. Funding would go towards staffing, equipment, vehicles, and supplies.

    - *Development of a Sea Turtle Emergency Response Program* – The proposed

Establishment of a Sea Turtle Emergency Response Program would provide funding to NOAA to develop and implement a comprehensive sea turtle disaster response program in the Gulf of Mexico. The primary focus of this proposed action would be creating a formal plan and necessary infrastructure (i.e. Mobile Aquatic Sea Turtle Hospital (MASH) units, supplies and equipment) and a robust training program to provide increased STSSN capacity for rapid response to cold stun and other emergency events with the potential to kill or injure large numbers of sea turtles. These events require search and rescue operations, triage, treatment, temporary holding, and eventual release of turtles. The program would work to increase response capacity by decreasing response times and increasing search areas during emergency events. Five MASH units and trailers would be purchased. Each contains twelve 500-gal tanks with filtration, UV filters, tents and setup equipment. This component would also include the use of contracts for vessel support during events.

- Gulf of Mexico Shrimp Trawl Bycatch Reduction Component – This proposed project component would enhance two existing NOAA programs in the Gulf of Mexico: the Gear Monitoring Team (GMT) program and the Shrimp Trawl Observer Program.

  The proposed GMT program would be expanded from one to three teams (each consisting of two staff) for deployment throughout the Gulf of Mexico. The proposed new GMT teams would work closely with TED manufacturers and net shops to assist and ensure that TEDs are properly built and installed to required standards, and would work with the fishing industry to improve their knowledge and understanding of how to effectively build, use, and maintain TEDs. This would be achieved through workshops and courtesy dock-side and at-sea TED inspections. The proposed expanded GMT program would increase capacity for education and outreach to the shrimp fishing community to improve compliance with existing federal TED regulations. The expanded GMT would also work closely with the Observer Program and the STSSN to identify specific areas of bycatch concern within the Gulf. The proposed expanded GMT is intended to provide direct benefits to sea turtles by decreasing the likelihood of capture mortality through greater use of properly built, installed, and maintained TEDs.

  This proposed component also includes expansion of the capacity of NOAA's Southeast Shrimp Trawl Fisheries Observer Program (Observer Program) to place trained observers on shrimping vessels in the Gulf of Mexico to monitor sea turtle bycatch. The primary goal of the expanded Observer Program is to improve capacity to collect data on bycatch of sea turtles in the shrimp trawl fishery in the Gulf. The proposed project component would add approximately 300 observer sea days annually, for a period of 10-years. This additional coverage would focus on specific times and areas identified as priorities for monitoring sea turtle bycatch to allow for better characterization and assessment of this bycatch. Information on sea turtle interactions with fishing activities will help target, refine, and improve conservation management and recovery of sea turtles in the Gulf.

- Texas Enhanced Fisheries Bycatch Enforcement Component - These proposed actions would enhance Texas Parks and Wildlife Department's enforcement activities for fisheries that incidentally catch sea turtles while they operate primarily in Texas state waters (approximately 367 miles of coast line out to 9 nautical miles) and the EEZ off Texas within the Gulf of Mexico for a 10-year period. These increased enforcement operations would focus on compliance with TED regulations during the Gulf shrimp fishery season (primarily February through mid-May) right before the Gulf closes to shrimping in May. These proposed actions are anticipated to reduce sea turtle mortalities through increased compliance with TED regulations as a result of increased enforcement actions.

Pelagic Longline Bycatch Reduction Project *(See PHASE IV DERP, Chapter 14, Section 14.1 for more detailed project description)* - The goal of the proposed Pelagic Longline Bycatch Reduction Project is to restore open-ocean (pelagic) fish that were affected by the spill. The Gulf pelagic longline (PLL) fishery primarily targets yellowfin tuna and swordfish, but incidentally catches and discards other fish, including marlin, sharks, bluefin tuna, and smaller individuals of the target species. Pelagic longline gear is indiscriminate in regard to species caught, resulting in the catch of non-target species. Due to the soak time of the gear, this bycatch is often dead when the gear is hauled-back. This proposed project aims to reduce bycatch fish associated with the Gulf PLL fishery by compensating PLL fishermen who agree to voluntarily refrain from PLL fishing in the Gulf during an annual 6 month repose period which coincides with the bluefin tuna spawning season.

The project would also provide participating fishermen with two alternative gear types – green stick or buoy gear - for their use to continue to fish for yellowfin tuna and swordfish during the repose period. Green-stick gear is trolled to target yellowfin tuna. Buoy gear is set to target swordfish. These two fishing gear types have been widely discussed for their potential effectiveness in reducing dead discards associated with directed fisheries for yellowfin tuna and swordfish in the Gulf of Mexico. Allowing use of these alternative gears during a PLL repose period would help reduce adverse financial impact to fishers and assist in maintaining local economies during the PLL repose periods. The proposed project would include technical extension services (research, outreach, and training on the use of the alternative gear types) to educate users and tune gears to achieve maximize effectiveness. The duration of the PLL Program is dependent upon the number of fishermen volunteering to participate each year, but is expected to be in place from 5 to 10 years, with the first year focused on establishing contracts and/or other arrangements necessary to support implementation.

Texas Rookery Islands Project *(See PHASE IV DERP, Chapter 5, Section 5.1 for more detailed project description* - This proposed project would restore and protect three rookery islands in Galveston Bay and one rookery island in East Matagorda Bay using coastal engineering techniques. The primary goal of the project is to partially compensate for injuries to birds by increasing nesting pairs of colonial waterbirds, including brown pelicans, gulls, terns (Royal and Sandwich Terns), and wading birds (great blue herons, roseate spoonbills, reddish egrets, great egrets, snowy egrets, tricolored herons, and black-crowned night herons). Restoration actions at each rookery island would increase the amount of available nesting habitat by expanding the size of the island enhance the quality of habitat by establishing native vegetation. Habitat longevity would be increased by expanding the size of the island, establishing vegetation, and constructing protective features, such as breakwaters or levees. These restoration actions would result in an increase in the numbers of nesting colonial waterbirds. Rookery islands in Galveston Bay include Dickinson Bay

Island II, located within Dickinson Bay; Rollover Bay Island, located in East (Galveston) Bay; and Smith Point Island, located west of the Smith Point Peninsula. Dressing Point Island lies in East Matagorda Bay, and is part of the Big Boggy National Wildlife Refuge.

APPENDIX B:

SUMMARY OF TCMP CONSISTENCY REVIEW FOR PROPOSED PHASE IV EARLY RESTORATION PROJECTS

Sea Turtle Early Restoration Project - The proposed Sea Turtle Early Restoration project consists of four project components: (1) Kemp's Ridley Sea Turtle Nest Detection and Enhancement; (2) Enhancement of the Sea Turtle Stranding and Salvage Network and Development of an Emergency Response Program; (3) Gulf of Mexico Shrimp Trawl Bycatch Reduction; and (4) Texas Enhanced Fisheries Bycatch Enforcement. The enforceable policies of the TCMP are intended to improve the management of the state's coastal natural resource areas (CNRAs), areas designated to be of particular concern to the state, and to ensure the long-term ecological and economic productivity of the Texas coast.

With respect to the coastal zone of Texas, the proposed Sea Turtle Early Restoration Project has the potential to:

- Reduce or have no effect on air quality, noise, surface water quality, and contaminant loadings to surface waters from vessels that normally patrol the beaches.

and has no potential to:

- disturb or impact any shorelines, habitats or substrates or cause any other physical change to the State's coastal environment.
- disturb or change any aesthetics in the State's coastal environment.
- change any existing infrastructure in the State's coastal environment, including in any coastal port
- affect public access or enjoyment of the coastal zone

The Trustees reviewed the restoration actions being undertaken by this project for consistency with the TCMP's goals and policies and have found, the proposed restoration activities are consistent with the applicable enforceable policies of the TCMP and will be undertaken in a manner that is consistent with Texas' approved coastal zone management program. The policies of the TCMP relevant to restoration actions proposed for this project are located in Chapter 31, Subchapter B of the Texas Administrative Code, and specifically at Section 501.12 (relating to the goals of the TCMP), Section 501.20 (relating to the policies for prevention, response and remediation of oil spills), Section 501.23 (relating to the policies for development in critical areas), Section 501.26 (relating to the policies for construction in the beach/dune system) and Section 501.27 (relating to the policies for development in coastal hazard areas), Section 501.28 (relating to policies for development within coastal barrier resource system units and otherwise protected areas on coastal barriers) and Section 501.29 policies for development in state parks, wildlife management areas or preserves.

31 TAC 501.20 Policies for Prevention, Response and Remediation of Oil Spills

GLO rules under the Oil Spill Prevention and Response Act (OSPRA), which govern the plans for the restoration, rehabilitation, replacement or acquisition of equivalent resources, requires participation by the public and must promote the restoration of the injured resources with all deliberate speed. The proposed Sea Turtle Early Restoration Project is consistent with this goal because, collectively, its component

actions would aid in the recovery of sea turtles from Spill-related injuries by increasing protection and survival of sea turtles and by reducing sea turtle mortalities in the Gulf of Mexico.

§501.23 Policies for Development in Critical Areas

This policy relates to dredging and construction of structures in, or the discharge of dredged or fill material into, critical areas. Cumulative and secondary adverse effects of activities are required to be considered and the policies in this section must be applied in a manner consistent with the goal of achieving no net loss of critical area functions and values.

The proposed Sea Turtle Early Restoration Project is consistent with the policies for development in critical areas because it would have minimal to no adverse impacts to critical areas as the projects occur on uplands and does not include wetlands or submerged lands. To the greatest extent practical, all adverse impacts would be avoided. However, if there are any unavoidable impacts they would be minimized to the greatest extent possible, and appropriate compensatory mitigation would be implemented.

§501.26 Policies for Construction in the Beach/Dune System

These policies state that construction within a critical dune area that results in the material weakening of dunes and material damage to dune vegetation is prohibited. Furthermore, construction within critical dune areas that does not materially weaken dunes or materially damage dune vegetation shall be sited, designed, constructed, maintained, and operated so that adverse "effects" (as defined in §15.2 of this title (relating to Coastal Area Planning) on the sediment budget and critical dune areas are avoided to the greatest extent practicable.

Portions of the proposed Sea Turtle Early Restoration Project would be conducted within the Beach/Dune system; however, it is consistent with the TCMP policies for development in the Beach/Dune system because the majority of the project would enhance existing programs already occurring within the system. The proposed project includes construction of cabins and nesting corrals within the Beach/Dune system on North Padre Island in Texas, but this portion of the project would occur within the Padre Island National Seashore, which is outside Texas' coastal management program boundary for purposes of the TCMP. See RULE §503.1(a)(5)..

§501.27 Policies for Development in Coastal Hazard Areas

Portions of the proposed Sea Turtle Early Restoration Project occur within Coastal Hazard Areas; however, the majority of the project does not include the placement of permanent structures within hazard areas. The proposed cabins and nesting corrals are located within the Padre Island National Seashore which is exempted from the goals and policies of the TCMP.

§501.28 Policies for Development Within Coastal Barrier Resource System Units and Otherwise Protected Areas on Coastal Barriers

This TCMP policy concerns the development of new infrastructure or major repair of existing infrastructure within a Coastal Barrier Resource System Unit or Otherwise Protected Areas. The proposed cabins and corrals are located within the Padre Island National Seashore, which is outside Texas' coastal management program boundary for purposes of the TCMP. See RULE §503.1(a)(5).

Pelagic Longline Bycatch Reduction Project - Pelagic Longline Bycatch Reduction Project (PLL Project) – The enforceable policies of the TCMP are intended to improve the management of the state's coastal natural resource areas (CNRAs), areas designated to be of particular concern to the state, and to ensure the long-term ecological and economic productivity of the Texas coast.

With respect to the coastal zone of Texas, the PLL Project has the potential to:

- Reduce or have no effect on air quality, noise, surface water quality, and contaminant loadings to surface waters from vessels that normally homeport or land catch in Texas.

and has no potential to:

- disturb or impact any shorelines, habitats or substrates or cause any other physical change to the State's coastal environment.
- disturb or change any aesthetics in the State's coastal environment.
- change any existing infrastructure in the State's coastal environment, including in any coastal port
- affect health and safety at ports or related to any PLL vessels operating in or transiting the State's coastal environment (no aspect of the project would require or result in a necessity to operate vessels or fish at times of risk).

The PLL Project is generally consistent with the TCMP's overall purpose, which is to help ensure the long-term environmental and economic health of the Texas coast because it will help to preserve marine fishery and other resources in the Gulf. The proposed PLL Project is primarily aimed at reducing the amount of fish lost as bycatch and dead discards associated with the Pelagic Longline (PLL) fishery in the Gulf of Mexico. The PLL fishery operates in the pelagic, oceanic waters of the U.S. Exclusive Economic Zone (EEZ) in the Gulf and uses pelagic longline gear to target yellowfin tuna and swordfish. The gear is indiscriminate, resulting in bycatch of non-target species (including marlin and sharks), smaller individuals of the target species, and regulatory discards[4] that, due to the soak time of the gear, are often dead when the gear is hauled in. PLL gear is also known to interact with protected species such as marine mammals, sea turtles, and seabirds and occasionally to result in injury to or loss of individuals.

The proposed PLL Project is comprised of two companion actions: (1) instituting a compensation-based, voluntary annual 6-month repose from PLL fishing in the Gulf (to coincide with bluefin tuna spawning season) and (2) providing participating fishermen with one of two gear alternative for their use during the repose period to continue to fish for yellowfin tuna and swordfish (greenstick gear and buoy gear, respectively) in the Gulf of Mexico EEZ. Use of the alternative gears is intended to reduce adverse financial impact to fishers and help maintain local economies during the PLL repose periods, but these gears are also monitored more closely and frequently by fishermen and have been shown to be more discriminate than PLL gear with respect to targeted species, to result in less bycatch and other discards, to

[4] Bycatch, as defined in MSFCMA Section 3 is, "Fish which are harvested in a fishery, but which are not sold or kept for personal use, and includes economic discards and regulatory discards." Regulatory discards are, "fish harvested in a fishery which fishermen are required by regulation to discard whenever caught, or are required by regulation to retain but not sell." Economic discards are, "fish which are the target of a fishery, but which are not retained because of an undesirable size, sex, or quality, or other economic reasons" (Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), Public Law 94-265, Sec. 3 Definitions, as Amended October 11, 1996, http://www.nmfs.noaa.gov/sfa/magact/mag1.html#s3

have lower mortality of bycatch and regulatory discards post-release, and to result in fewer interactions with protected species. The proposed PLL Project will reduce the use of PLL gear, and result in less bycatch and dead fish discards as well as fewer instances of injury or loss of protected species.

The principle actions that would be undertaken to implement the PLL Project are (1) the identification of and creation of compensation-based agreements with willing PLL vessel owners to enact individual 6 month repose period(s) from PLL fishing, and (2) the provisioning of one of the two alternative gears, and the associated extension services, to each participant. Neither of these actions are of a type that would directly "occur" or "take place" within the coastal zone of Texas. However, during the life of the project, these actions are expected to result in less use of PLL gear in the Gulf EEZ (fewer hook sets during the 6 month repose period, beginning in project year two) and increased use of two other gears by PLL fishermen as they continue to fish for target species.

Together, these voluntary changes in PLL fishery practice in the Gulf EEZ would reduce fish lost because of PLL bycatch and dead discards in the Gulf EEZ (and partially restore pelagic fish biomass the Gulf of Mexico) and result in even fewer occasions of injury to or loss of protected species such as marine mammals, sea turtles and sea birds. Reducing incidental PLL catch mortalities will benefit the stocks of the species caught by PLL fishing gear by allowing more fish to remain alive, to continue to grow, and potentially to reproduce and contribute to the propagation of future year classes. Some stocks of fish caught by PLL fishing gear are overfished and the reduction in dead discards from the PLL repose may help to improve the overall status of these stocks. Bluefin tuna is one of the pelagic species for which dead discards are anticipated to be reduced. Lower protected species mortalities and injuries are also expected to result from experiencing fewer harmful interactions with PLL gear. As with fishery resources, protected species may benefit from the individuals that that remain in the population and continue to grow and/or contribute to the propagation of their respective species. All such benefits have the potential to be of benefit to these same fishery and protected resources as are or may be present in the coastal zone of Texas. Further, the provisions for compensation and for ensuring participants can continue to fish for target species is intended to avoid adverse financial impacts to participants and to help maintain local economies (e.g., fish dealers, fuel suppliers, and shore-side ice, bait, equipment suppliers, etc) at those Gulf ports that normally receive landings of catch by PLL vessels[5], including those in Texas.

Implementation of the proposed PLL Project would not conflict with any efforts underway to manage and preserve marine fishery resources under other authorities, including the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), the Atlantic Tunas Convention Act (ATCA), and Amendment 7 to the 2006 Consolidated HMS Fishery Management Plan: Bluefin Tuna Management.

§501.20 Policies for Prevention, Response and Remediation of Oil Spills

GLO rules under the Oil Spill Prevention and Response Act (OSPRA), which govern the plans for the restoration, rehabilitation, replacement or acquisition of equivalent resources, require participation by the public and must promote the restoration of the injured resources with all deliberate speed. The proposed PLL Project is consistent with this goal because it would reduce fish lost and result in fewer occasions of injury to or loss of protected species from the use of PLL gear in the Gulf of Mexico.

[5] The top five ports of landing in the Gulf states (as measured by the number of gear sets made from 2006 to 2012) include Dulac, LA; Panama City, FL; Golden Meadow, LA; Venice, LA; and Galveston, TX.

Texas Rookery Islands Project - The proposed Texas Rookery Islands project consists of the restoration and protection of four islands in Texas waters. This proposed project would restore and protect three rookery islands in the Galveston Bay Complex and one rookery island in East Matagorda Bay using coastal engineering techniques. The primary goal of the project is to increase nesting of colonial waterbirds, including brown pelicans, gulls, terns (royal and sandwich terns), and wading birds (great blue herons, roseate spoonbills, reddish egrets, great egrets, snowy egrets, tricolored herons, and black-crowned night herons). The proposed project actions would restore colonial waterbirds by increasing the amount of available nesting habitat, enhancing the quality of habitat, and increasing the longevity of the habitat.

With respect to the coastal zone of Texas, the proposed Texas Rookery Islands project has the potential to:

- to protect, preserve restore, and enhance the diversity, quality, quantity, functions, and value of coastal natural areas (CNRAs)

and has no potential to:

- change any existing infrastructure in the State's coastal environment, including in any coastal port
- affect public access or enjoyment of the coastal zone

The Trustees reviewed the restoration actions being undertaken by this project for consistency with the Texas Coastal Management Program's (TCMP's) goals and policies and have found, the restoration activities are consistent with the applicable enforceable policies of the TCMP and will be undertaken in a manner that is consistent with the approved coastal zone management program. The policies of the TCMP relevant to restoration actions undertaken by this project are located in Chapter 31, Subchapter B of the Texas Administrative Code, and specifically at Section 501.12 (relating to the goals of the TCMP), Section 501.20 (relating to the policies for prevention, response and remediation of oil spills), and Section 501.23 (relating to the policies for development in critical areas), Section 501.24 (relating to policies for construction of waterfront facilities and other structures on submerged lands), and Section 501.25 (relating to policies for dredging and dredged material and placement.

§501.20 Policies for Prevention, Response and Remediation of Oil Spills
GLO rules under the Oil Spill Prevention and Response Act (OSPRA), which govern the plans for the restoration, rehabilitation, replacement or acquisition of equivalent resources, require participation by the public and must promote the restoration of the injured resources with all deliberate speed. The proposed Texas Rookery Islands project is consistent with this goal because it would implement cost-effective and proven methodologies for the restoration of birds in the Gulf of Mexico.

§501.23 Policies for Development in Critical Areas
This policy relates to dredging and construction of structures in, or the discharge of dredged or fill material into, critical areas. Cumulative and secondary adverse effects of activities are required to be considered and the policies in this section must be applied in a manner consistent with the goal of achieving no net loss of critical area functions and values.

The proposed Texas Rookery Islands project will discharge fill materials onto submerged lands; however, the project will protect and enhance critical habitats which is consistent with the goals of the TCMP. In addition, the project will achieve the goal of no net loss of critical area functions and values. Adverse

effects on critical areas will be avoided to the greatest extent practicable. The project will require a USACE permit in which all the enforceable policies of the TCMP will be reviewed for consistency.

§501.24 Policies for Construction of Waterfront Facilities and Other Structures on Submerged Lands
The proposed Texas Rookery Islands project proponents would obtain a surface lease for the use of State owned submerged lands. The proposed project is consistent with the TCMP policies because the project would not further degrade CNRAs or impact the public's ability to enjoy the natural aesthetic values of coastal submerged lands. The proposed activities would avoid and minimize any significant interference with the public's use and access to submerged lands. The proposed project would not interfere with public navigation nor significantly interfere with the natural coastal processes that supply sediments to shore areas. The proposed project would not exacerbate erosion of shore areas but would decrease the erosion of critical nesting areas for numerous species of birds. The proposed project will require a USACE permit in which all the enforceable policies of the TCMP will be reviewed for consistency.

§501.25 Policies for Dredging and Dredged Material and Placement
Dredging and the disposal and placement of dredged material shall avoid and otherwise minimize adverse effects to coastal waters, submerged lands, critical areas, coastal shore areas, and Gulf beaches to the greatest extent practicable. The proposed Texas Rookery Islands project is consistent with TCMP policies for the placement of the dredge materials. The project would reduce erosion of existing islands and provide shoreline protection for critical habitats. The project would create new terrestrial habitat for nesting bird species and will benefit the islands' sediment budget. The project would be constructed with methodologies that will control the location and dimensions of the activities and would be designed to avoid adverse disruptions of water circulations, erosion and accretion processes. The proposed project will require USACE permits in which all the enforceable policies of the TCMP will be reviewed for consistency.